United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 22-0232**
	)	**Issued: August 3, 2022**
DEPARTMENT OF VETERANS AFFAIRS, HEALTH ELIGIBILITY CENTER, Atlanta, GA, Employer	)	

Appearances:
Brad Friez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 17, 2021 appellant, through his representative, filed a timely appeal from a July 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on April 7, 2021, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the July 30, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On June 15, 2021 appellant, then a 64-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that at 7:15 a.m. on April 7, 2021 he sustained injury when he was walking through snow at his home and fell to the ground, landing on his right hand and right knee while in the performance of duty. He asserted that he was walking through the snow in order to brush snow off his truck and then go to work at the employing establishment's Health Executive Committee (HEC) worksite. Appellant stopped work on the date of the claimed injury. On the reverse side of the form, S.J., appellant's immediate supervisor, indicated that appellant reported that the claimed injury occurred at 7:15 a.m. on April 7, 2021, but his workday did not begin until 8:00 a.m., and appellant was at his home, rather than at his worksite, at the time of the claimed injury. S.J. checked a box marked "No" indicating that appellant's claimed injury did not occur in the performance of duty.

In a June 17, 2021 letter, T.L., a human resource specialist, advised that the employing establishment was challenging appellant's claim for an April 7, 2021 injury because the claimed injury occurred at appellant's home 45 minutes prior to the start time of his work. She maintained that appellant was not on employing establishment grounds when the incident occurred and noted that he was not approved for "early work." T.L. indicated, "[appellant] was not in [the] performance of duty since his injury was not caused by any assigned work-related duties, on agency property or by any work assigned by the agency in his home."

Appellant submitted an April 7, 2021 note in which Julie Watts, a nurse practitioner, indicated that he would be off work until he saw an orthopedic specialist on April 14, 2021. In an April 14, 2021 note, an individual with an illegible signature advised that appellant would have a cast on his right hand for six weeks and that he was restricted from lifting with his right hand. In a May 12, 2021 note, an individual with an illegible signature indicated that appellant could return to work on May 30, 2021. Appellant also submitted an x-ray of a hand and administrative documents from his visits to healthcare providers on unspecified dates.

In a June 25, 2021 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of evidence needed. OWCP afforded appellant 30 days to respond.

Appellant submitted an April 14, 2021 report from Dr. Aaron D. Dykstra, a Board-certified orthopedic surgeon, who recounted that appellant reported that he worked for the employing establishment at a remote worksite and that he suffered a fall on ice that "impacted his right hand." Dr. Dykstra diagnosed displaced fracture of the right fifth metacarpal base. In an April 16, 2021 report, he discussed his performance on that date of closed reduction surgery with pin fixation of a fracture of the right fifth metacarpal base. In April 26 and July 2, 2021 reports, Jason Koch, a physician assistant, discussed the follow-up care for appellant's right hand.

By decision dated July 30, 2021, OWCP accepted that appellant had established the occurrence of the April 7, 2021 fall to the ground at work, as alleged. However, it denied his claim, finding that he had not established the factual component of fact of injury. OWCP found that the evidence was not sufficient to establish that the claimed event occurred as appellant described, noting that he did not provide a statement identifying where he was in relation to his

workplace at the time of the claimed injury. It noted that the evidence of record indicated that appellant was injured off the premises of the employing establishment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FCA, that the claim was timely filed within the applicable time limitation of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether an employee has sustained a work-related traumatic injury, OWCP conducts an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] Rationalized medical opinion evidence is required to establish causal relationship.[8]

The requirement that an injury must be "sustained while in the performance of duty" is discussed in section 8102(a) of FECA which provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[9] The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[10] The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he

[3] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] 5 U.S.C. § 8102(a).

[10] *S.S.*, Docket No. 20-1349 (issued February 16, 2021); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

or she may reasonably be expected to be in connection with the employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[11] This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained injury while in the performance of duty on April 7, 2021, as alleged.

In the present case, appellant alleged that on April 7, 2021 he sustained injury when he was walking through snow at his home while in the performance of duty. He advised that he fell to the ground, landing on his right hand and right knee, when he walked through the snow in order to brush snow off his truck and then go to work at the employing establishment's worksite.

The Board finds that appellant has not met his burden of proof because he was not in the course of his employment at the time of his claimed April 7, 2021 injury and therefore was not in the performance of duty.[13]

Appellant's immediate supervisor indicated that appellant reported that the claimed injury occurred at 7:15 a.m. on April 7, 2021, but his workday did not begin until 8:00 a.m., and appellant was at his home, rather than at his worksite, at the time of the claimed injury. In a June 17, 2021 letter, T.L., a human resource specialist, advised that the employing establishment was challenging appellant's claim because the claimed injury occurred at appellant's home 45 minutes prior to the start time of his work. She maintained that appellant was not on agency grounds when the incident occurred, and noted that he was not approved for early work. T.L. indicated that appellant was not in the performance of duty at time of the claimed injury on April 7, 2021 because his injury was not caused by any assigned work-related duties, he was not on the employing establishment's property, and he was not performing any work assigned by the employing establishment at his home.

The Board notes that the above-described information provided by the employing establishment demonstrates that appellant's fall on April 7, 2021 did not occur while he was in the performance of duty. Appellant has not shown that his claimed April 7, 2021 injury occurred at a time when he may reasonably be stated to have been engaged in the master's business, at a place where he may have reasonably been expected to have been in connection with the employment,

[11] *K.M.*, Docket No. 20-1528 (issued March 23, 2022); *T.F.*, Docket No. 08-1256 (issued November 12, 2008).

[12] *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

[13] In its July 30, 2021 decision, OWCP denied appellant's claim for an April 7, 2021 injury on the basis that he had not established the factual component of fact of injury. The Board notes, however, that it would be more appropriate to deny appellant's claim on the basis that he did not establish that an injury was sustained while in the performance of duty on April 7, 2021.

and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[14]

Appellant claimed that the April 7, 2021 injury occurred 45 minutes before his official start time of 8:00 a.m. when he was in the process of traveling from his home to his worksite. As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[15] Moreover, it may not reasonably be stated that appellant was engaged in his master's business at the time of the April 7, 2021 fall at home. The employing establishment indicated that appellant was not performing his work duties or any act incidental to his work duties at the time of his claimed employment injury.

For these reasons, appellant has not met his burden of proof to establish that he sustained injury while in the performance of duty on April 7, 2021, and the July 30, 2021 decision of OWCP shall be modified to reflect this as the basis for the denial of his claim for an April 7, 2021 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained injury while in the performance of duty on April 7, 2021.

[14] *See supra* note 10.

[15] *L.P.*, Docket No. 17-1031 (issued January 5, 2018); *Mary Keszler*, 38 ECAB 735, 739-40 (1987).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 3, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board